

National Science Foundation

§ 672.10

only upon motion granted by the Presiding Officer.

(i) Complainant, in cooperation with the Office of General Counsel, may refer cases to the Department of Justice for possible criminal prosecution if there is reason to believe that respondent willfully violated the Antarctic Conservation Act or its attendant regulations. Such referral does not automatically preclude NSF from proceeding administratively under the Act and these rules against the same respondent.

§ 672.8 Answer to the complaint.

(a) *General.* Where respondent (1) contests any material fact upon which the complaint is based; (2) contends that the amount of the penalty proposed in the complaint or the proposed revocation or suspension, as the case may be, is inappropriate; or (3) contends that he is entitled to judgment as a matter of law, he shall file a written answer to the complaint with the Hearing Clerk. Any such answer to the complaint must be filed with the Hearing Clerk within twenty (20) days after service of the complaint.

(b) *Contents of the answer.* The answer shall clearly and directly admit, deny or explain each of the factual allegations contained in the complaint. If respondent asserts he has no knowledge of a particular factual allegation, the allegation is deemed denied. The answer shall also state (1) the circumstances or arguments which are alleged to constitute the grounds of defense; (2) the facts which respondent intends to place at issue; and (3) whether a hearing is requested.

(c) *Request for hearing.* A hearing upon the issues raised by the complaint and answer shall be held upon request of respondent in the answer. The Presiding Officer may deem the right to a hearing waived if it is not requested by respondent. In addition, a hearing may be held at the discretion of the Presiding Officer, sua sponte, to examine issues raised in the answer.

(d) *Failure to admit, deny, or explain.* Failure of respondent to admit, deny, or explain any material factual allegation contained in the complaint constitutes an admission of the allegation.

(e) *Amendment of the answer.* The respondent may amend the answer to the complaint upon motion granted by the Presiding Officer.

§ 672.9 Motions.

(a) *General.* All motions, except those made orally on the record during a hearing, shall (1) be in writing; (2) state the basis or grounds with particularity; (3) set forth the relief or order sought; and (4) be accompanied by any affidavit, certificate, or other evidence or legal memorandum relied upon.

(b) *Response to motions.* A party must file a response to any written motion within ten (10) days after service of such motion, unless the Presiding Officer allows additional time. The response shall be accompanied by any affidavit, certificate, other evidence, or legal memorandum relied upon. If no response is filed within the designated period, the Presiding Officer may deem the parties to have waived any objection to the granting of the motion. The Presiding Officer may also set a shorter time for response, or make such other appropriate orders concerning the disposition of motions.

(c) *Ruling on Motions.* The Presiding Officer shall rule on all motions, unless otherwise provided in these rules. The Presiding Officer may permit oral argument if he considers it necessary or desirable.

§ 672.10 Default order.

(a) *Default.* The Presiding Officer may find a party in default (1) after motion, upon failure to file a timely answer to the complaint; (2) after motion or sua sponte, upon failure to comply with a prehearing or hearing order of the Presiding Officer; or (3) after motion or sua sponte, upon failure to appear at a conference or hearing without good cause being shown. No finding of default on the basis of a failure to appear at a hearing shall be made against the respondent unless the complainant presents sufficient evidence to the Presiding Officer to establish a prima facie case against the respondent. Any motion for a default order shall include a proposed default order and shall be served upon all parties. The alleged defaulting party shall have twenty (20) days from service to reply

to the motion. Default by respondent constitutes, for purposes of the pending action only, an admission of all facts alleged in the complaint and a waiver of respondent's right to a hearing on such factual allegations. If the complaint is for the assessment of a civil penalty, the penalty proposed in the complaint shall become due and payable by respondent without further proceedings sixty (60) days after a final order issued upon default. If the complaint is for the revocation or suspension of a permit, the conditions of revocation or suspension proposed in the complaint shall become effective without further proceedings on the date designated by the Presiding Officer in his final order issued upon default. Default by the complainant shall result in the dismissal of the complaint with prejudice.

(b) *Procedures upon default.* When the Presiding Officer finds a default has occurred, he shall issue a default order against the defaulting party. This order shall constitute the initial decision, and shall be filed with the Hearing Clerk.

(c) *Contents of a default order.* A default order shall include findings of fact showing the grounds for the order, conclusions regarding all material issues of law or discretion, and the penalty which is recommended, or the terms and conditions of permit revocation or suspension, or other sanctions.

(d) The Presiding Officer may set aside a default order for good cause shown.

§ 672.11 Informal settlement; consent agreement and order.

(a) *Settlement policy.* The Agency encourages settlement of a proceeding at any time if the settlement is consistent with the provisions and objectives of the Act and applicable regulations. The respondent may confer with complainant concerning settlement whether or not the respondent requests a hearing. Settlement conferences shall not affect the respondent's obligation to file a timely answer.

(b) *Consent agreement.* The parties shall forward a written consent agreement and a proposed consent order to the Presiding Officer whenever settlement or compromise is proposed. The

consent agreement shall state that, for the purpose of this proceeding, respondent (1) admits the jurisdictional allegations of the complaint; (2) admits the facts stipulated in the consent agreement or neither admits nor denies specific factual allegations contained in the complaint; and (3) consents to the assessment of a stated civil penalty or to the stated permit revocation or suspension, or to other sanctions or actions in mitigation. The consent agreement shall include any and all terms of the agreement, and shall be signed by all parties or their counsel or representatives.

(c) *Consent order.* No settlement or consent agreement shall dispose of any proceeding under the rules without a consent order from the Director or his delegatee. Before signing such an order, the Director or his delegatee may require that the parties to the settlement appear before him to answer inquiries relating to the consent agreement or order.

(d) *Actions by respondent to clean, protect, enhance, or benefit the environment.* NSF may accept from respondent environmentally beneficial actions, in lieu of penalties, in whole or in part, assessed under the Antarctic Conservation Act. An assessment of the monetary value of any action in mitigation shall be made before that action is incorporated as a part of any consent agreement and order.

§ 672.12 Prehearing conference.

(a) *Purpose of prehearing conference.* Unless a conference appears unnecessary, the Presiding Officer, at any time before the hearing begins, shall direct the parties and their counsel or other representatives to appear at a conference before him to consider:

- (1) The settlement of the case;
- (2) The simplification of issues and stipulation of facts not in dispute;
- (3) The necessity or desirability of amendments to pleadings;
- (4) The exchange of exhibits, documents, prepared testimony, and admissions or stipulations of fact which will avoid unnecessary proof;
- (5) The limitation of the number of expert or other witnesses;
- (6) Setting a time and place for the hearing; and